

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RLI INSURANCE COMPANY,

07 Cv. 9546 (JBD)(HP)

Plaintiff,

-against-

JDJ MARINE, INC.

Defendant.  
-----X

**AFFIDAVIT IN  
OPPOSITION TO  
COMMERCE BANK, N.A.  
MOTION TO INTERVENE  
AS OF RIGHT**

STATE OF NEW YORK     )  
                                  s.s.:  
COUNTY OF NEW YORK    )

JOHN A.V. NICOLETTI, being duly sworn, deposes and says:

1. I am duly admitted to practice law in the State and Federal Courts of New York and before this Honorable Court and am a member of the law firm of NICOLETTI HORNIG & SWEENEY, attorneys for Plaintiff RLI Insurance Company (hereinafter "RLI") in the above captioned action.

2. I am fully familiar with all of the pleadings and proceedings in this action.

3. This affidavit is submitted in opposition to Commerce Bank N.A.'s (hereinafter "Commerce") Motion to Intervene as of Right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure.

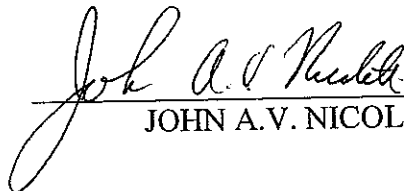
4. The purpose of this Affidavit is to place before the Court the following evidence:

5. Annexed hereto as Exhibit "1" are true and accurate copies of the Affidavits of Service related to RLI's personal service of a Summons and Complaint upon JDJ Marine, Inc. (hereinafter "JDJ").

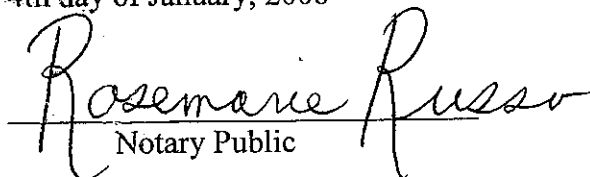
6. Annexed hereto as Exhibit "2" is a true and accurate copy of a Stipulation dated December 5, 2007, between the undersigned and FRICKE & SOLOMON, attorneys appearing for JDJ in this action, which extended JDJ's time to file its Answer and/or otherwise move as to RLI's Complaint to January 3, 2008.

7. Annexed hereto as Exhibit "3" is a true and accurate copy of the Amended Complaint filed on January 2, 2008, which includes copies of Policy No. HUL0100185 (Exhibit "A") and the Final Judgment and Order of Arrest of Vessel and Possession of Collateral issued by the Hon. Gerald E. Lynch in the Southern District of New York on April 20, 2007 (Exhibit "B").

8. Annexed hereto as Exhibit "4" is a true and accurate copy of a letter from the undersigned to the Court dated December 7, 2007.

  
JOHN A.V. NICOLETTI

Sworn to before me this  
4th day of January, 2008

  
Notary Public

ROSEMARIE RUSSO  
Notary Public, State of New York  
No. 01RU4634359  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires Dec. 31, 20\_\_\_/0

TO:

Fricke & Solomon  
Attorneys for Defendant  
*JDJ MARINE, INC.*  
Richard M. Fricke (RF-7486)  
622 Barlow Avenue  
Staten Island, New York 10312  
Tel: 718-984-2626  
Fax: 718-984-5820  
E-mail:rfricke@metrolaw.com

Ostrowitz & Ostrowitz, Esqs  
Attorneys for *COMMERCE BANK, N.A.*  
Alan R. Ostrowitz (AO-7173)  
150 Broadway, Suite 2206  
New York, New York 10038  
Tel: 212-509-2800  
Fax: 732-446-5837  
E-mail:[ostrow.law@verizon.net](mailto:ostrow.law@verizon.net)

Requested papers to be sent to:  
225 Gordons Corner Road, Suite 1-J  
Manalapan, New Jersey 07726

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**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK    )  
                                  S.S.:  
COUNTY OF NEW YORK)

ROSEMARIE RUSSO, being duly sworn, deposes and says:

I am employed by the firm of NICOLETTI HORNIG & SWEENEY, attorneys for the plaintiff. I am not a party to this action, am over 18 years of age and reside in Nassau County, New York.

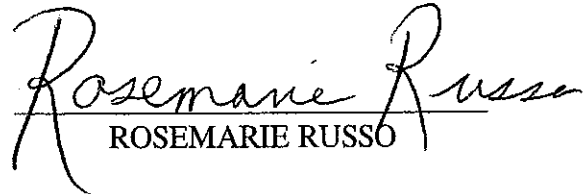
On January 4, 2008, I served the annexed **AFFIDAVIT IN OPPOSITION TO COMMERCE BANK, N.A. MOTION TO INTERVENE AS OF RIGHT**, upon the following:

Fricke & Solomon  
Attorneys for Defendant  
*JDJ MARINE, INC.*  
Richard M. Fricke (RF-7486)  
622 Barlow Avenue  
Staten Island, New York 10312  
Tel: 718-984-2626  
Fax: 718-984-5820  
E-mail: rfricke@metrolaw.com

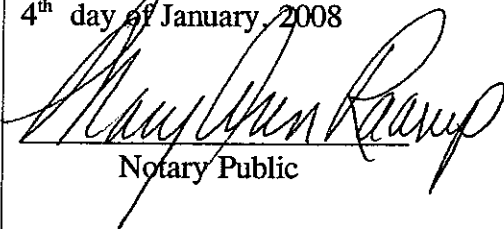
Ostrowitz & Ostrowitz, Esqs  
Attorneys for *COMMERCE BANK, N.A.*  
Alan R. Ostrowitz (AO-7173)  
150 Broadway, Suite 2206  
New York, New York 10038  
Tel: 212-509-2800  
Fax: 732-446-5837  
E-mail: [ostrow.law@verizon.net](mailto:ostrow.law@verizon.net)

Requested papers to be sent to:  
225 Gordons Corner Road, Suite 1-J  
Manalapan, New Jersey 07726

at the addresses designated by said attorneys for that purpose, by depositing true copies of same enclosed in postpaid, properly addressed wrappers in an official depository under the exclusive care and custody of the United States Postal Services within the State of New York.

  
ROSEMARIE RUSSO

Sworn to before me this  
4<sup>th</sup> day of January, 2008

  
Notary Public

